

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBA No. 80 of 2016

1. Rahul Somani S/o Shri Pawan Kumar Somani, Aged About 32 Years
2. Smt. Rekha Somani W/o Shri Pawan Kumar Somani, Aged About 57 Years
3. Piyush Somani S/o Shri Pawan Kumar Somani, Aged About 31 Years

All are R/o Station Road Champa, Thana & Tehsil- Champa, Post Champa, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. Ramgopal Somani S/o Late Shri Ganesh Narayan, Aged About 53 Years
2. Varun Somani S/o Shri Ramgopal Somani, Aged About 30 Years
3. Smt. Shanta Somani W/o Shri Ramgopal Somani, Aged About 51 Years

All are R/o Tehsil Road Champa, Thana & Tehsil Champa, Post Champa, District Janjgir-Champa, Chhattisgarh

---- Respondent

For Petitioners
For Caveators

Mr. Harsh Wardhan, Advocate
Mr. Rakesh Jha and Mr. Sanjay Kumar,
Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/1/2017

1. Heard.
2. The present is an application under Section 11(6) read with Sections 12, 14 & 15 of the Arbitration and Conciliation Act, 1996 (for short "the Act, 1996") for termination of mandate given to the Arbitrator Mr. Sajjan Agrawal and thereafter, appointment of an Arbitrator to substitute him, for adjudication of the dispute between the parties.
3. At the outset, learned counsel for the respondents have raised preliminary objection regarding maintainability of the petition on the ground that the jurisdiction to terminate the mandate is with the principal Civil Court of original jurisdiction and not with the High Court.
4. Per contra, Mr. Harsh Wardhan, learned counsel for the applicant, would submit that the application is not only under Section 14 of the Act, 1996, but is also for appointment of new Arbitrator, for which, this Court has jurisdiction under Section 11(6) of the Act, therefore, the application is maintainable.
5. I have heard learned counsel for the parties for sometime and perused the documents.

6. Undeniably, the parties have entered into a partnership agreement vide Annexure A-1. The deed of partnership contains an arbitration clause i.e. clause 15 providing that in case of any dispute or differences amongst the partners about the partnership affairs, the matter shall be referred to arbitration by a person as may be agreed by all the partners.
7. In due course of the business undertaken by the partners, a dispute arose between them and they decided to invoke arbitration clause and submit to the jurisdiction of the Arbitrator by signing a deed of joint consent for appointment of Arbitrator. The present Arbitrator Mr. Sajjan Agrawal S/o Rudhmal Agrawal was the Arbitrator named and agreed to by both the parties under the said deed of joint consent for appointment of Arbitrator.
8. When the arbitration proceeding is going on, the present application has been filed for termination of mandate and for appointment of fresh Arbitrator on the ground that the Arbitrator has become *de jure* or *de facto* unable to perform his functions, inasmuch as, he is a party to the affairs between the parties, and also on the ground that he is incapacitated to act as Arbitrator because of his disqualification.
9. It is not in dispute that when the deed of joint consent for appointment of Arbitrator was executed, the parties consented to the appointment, therefore, there was no occasion for any of the parties to invoke the jurisdiction of the High Court under Section 11(6) of the Act. Therefore, the stage of Section 11(6)

was achieved by the parties by their joint act and now, the matter is at the stage of termination of mandate as provided under Section 14 (1) & (2) of the Act, 1996.

10. Under sub-section (1) of Section 14 of the Act, 1996, the mandate of an Arbitrator shall be terminated if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, and he withdraws from his office or the parties agree to the termination of his mandate. Under sub-section (2), if a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1) of Section 14, a party may, unless otherwise agreed by the parties, apply to the “**Court**” to decide on the termination of the mandate.

11. The word “**Court**” has been defined under Section 2(1) (e) (i) of the Act, 1996, which reads as under :

“(e) “Court” means -

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

12. A conjoint reading of the provisions contained in Section 14(2) and Section 2(1) (e) (i) of the Act, 1996, would manifest that a prayer for termination of mandate would lie before the Principal Civil Court of original jurisdiction or with the High Court where the High Court is exercising ordinary original civil jurisdiction.
13. The High Court of Chhattisgarh has been constituted in exercise of powers under Section 21 of the Madhya Pradesh Reorganisation Act, 2000. Neither under the said Act nor under any other constitutional mandate, this Court has been clothed with the ordinary original civil jurisdiction.
14. Thus, in the case at hand, the word **"Court"** would mean the principal Civil Court of original jurisdiction i.e. the Court of District Judge of the concerned District. The application under Section 14 would, thus, lie before the District Judge of the concerned District having exercising power of principal Civil Court of original jurisdiction and not before the High Court.
15. In reaching to the above conclusion, I draw assistance from the law laid by the Supreme Court in the matter of **Nimet Resources INC and another Vs. Essar Steels Ltd, (2007)8 Scale**, in which, the following has been held by the Supreme Court in paras 7 to 11:

"7. Sub-Section (2) of Section 14 of the 1996 Act reads as under :-

"Section 14(2) If a controversy remains concerning

any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.”

8. Application in terms of sub-Section (2) of Section 14, thus, lies before a 'Court' within the meaning of the 1996 Act.
9. It is only thus the 'Court' , within the meaning of the provisions of the said Act which can entertain such an application raised by the parties herein and determine the dispute therein on merit.
10. Unlike the 1940 Act, “Court” has been defined in Section 2(1)(e) to mean;

“2(1)(e) Court means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any court of Small Causes”

11. As a “Court” has been defined in 1996 Act itself, an application under Section 14(2) would be maintainable only before the Principal Civil Court which may include a High Court having jurisdiction but not this Court.”

16. Yet again in the matter of **Lalitkumar V. Sanghavi (dead)**
Through LRS Neeta Lalit Kumar Sanghavi and another Vs.

Dharamdas V. Sanghavi and others, (2014) 7 SCC 255, the Supreme Court has held, thus, in para 14 to 17 :

“11. Section 14(2) provides that if there is any controversy regarding the termination of the mandate of the arbitrator on any of the grounds referred to in the clause (a) then an application may be made to the Court - “to decide on the termination of the mandate.”

14. On the facts of the present case, the applicability of sub-clauses (a) and (b) of Section 32(2) is clearly ruled out and we are of the opinion that the order dated 29th October, 2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-Section (2), sub-clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the arbitral tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the court “as provided under Section 14(2)”.

15. The expression “Court” is a defined expression under Section 2(1)(e) which reads as follows _

"Section 2(1)(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not – include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

16. Therefore, we are of the opinion, the apprehension of the appellant that they would be left remediless is without basis in law.]

17. The appellants are at liberty to approach the appropriate court for the determination of the legality of the termination of the mandate of the arbitral tribunal which in turn is based upon an order dated 29th October, 2007 by which the arbitral proceedings were terminated."

17. In the present case, learned counsel for the applicant has raised another ground to press his application before this Court on submission that the present is a joint application for termination of mandate as well as for appointment of new Arbitrator, therefore, for the remaining part of the prayer, the application is maintainable.

18. I am not impressed with the arguments advanced by learned counsel for the applicant, because, as long as an Arbitrator is

functioning under the deed of joint consent for appointment of Arbitrator and is seized of the matter, a second application for appointment of fresh Arbitrator is not maintainable unless the mandate of the earlier appointed Arbitrator is terminated in accordance with Section 14 of the Act, 1996.

19. I am not commenting on the jurisdiction of this Court under Section 11(6) of the Act, 1996, once the mandate is terminated, but for the present, this Court has no jurisdiction to entertain an application for appointment of fresh Arbitrator.

20. For the foregoing, the application is dismissed, as not maintainable. However, the applicant would be at liberty to approach the principal Civil Court of original jurisdiction seeking prayer to terminate the mandate of the Arbitrator.

Sd/-

Judge

(Prashant Kumar Mishra)

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